

LAKE COUNTY PLANNING BOARD
November 14, 2018
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, John Fleming, Brendeon Schoening; Lee Perrin, Frank Mutch

STAFF PRESENT: Jacob Feistner, Clint Evenson, Lita Fonda; Wally Congdon

No quorum at 7 pm. Steve Rosso called the meeting to order at 7:35 pm.

GRAHAM LAKESHORE - BUOY (7:35 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the November 2018 meeting file for staff report.) No one was present to offer comments for the applicant.

Public comment opened: None present to comment. *Public comment closed.*

Brendeon observed this didn't create a hazard or impede the neighbors.

Lee was curious why they needed a mooring buoy since they also had a dock. Steve noted he lived nearby and had met the applicants. The owners were two brothers. When both families were there at the same time, two boats needed places. He thought the boat lift on the dock was for a jet ski rather than a boat. Clint verified for Lee that this buoy shouldn't interfere with other mooring buoys in the area, and added those were unpermitted buoys. Those were 100 to 150 feet out. Jacob pointed to the location of the proposed buoy. [Staff] figured they had about a 35-foot swing radius and the other buoys were well out of the range. Brendeon said if you didn't have a shore station, it was typically safer on a buoy.

Regarding the swing listed, Clint confirmed it was the amount of swing of the buoy itself plus the length of the boat as estimated with a 20-foot boat. Steve said the boat would hang over the riparian boundary to the south if a breeze blew from the north. The neighbor to the south was the sister of the applicants. It might be wise to make a comment in case the property to the south changed hands and the new owners objected to the boat drifting in front of their property from time to time. He suggested inserting a sentence in the findings in B on pg. 5, prior to the last sentence: "If a neighbor in the future objects to the swing of the moored boat crossing the riparian boundary, the landowner must reapply and move the anchor/buoy." Jacob compared this to his neighbor parking his RV in front of Jacob's house. He didn't want to stare at his neighbor's camper all the time but there was nothing legally they could do to enforce that. Steve asked why they had the riparian boundaries with setback for docks in that case. Jacob agreed that the principle was good but it wasn't in the regulations. He didn't know what authority they would have to require it. Jacob clarified that in the section on mooring buoys, there was no discussion [about having the buoy within the riparian boundaries]. Structures such as boathouses, boat shelters and docks had setbacks but not buoys. That was why staff hadn't included this. Steve thought the Board could still include a condition. Frank questioned that. Steve thought it was an oversight in the regulations. They had an opportunity to do this in the conditions.

Jacob said if the buoy was below the low water mark, it would be outside their jurisdiction. Steve noted that with the houseboats in Somers Bay, Flathead County said they had jurisdiction up to 200 feet. If someone anchored in front of your house closer than 200 feet there, the County could do something. Jacob didn't know where that 200 feet came from. Steve agreed. Jacob described that in state statute, the landowner adjacent to the lake could claim low water on navigable water way. Beyond low water was the public right-of-way. If the buoy was below low water, he didn't know what right the County had to regulate it. Steve pointed to regulations on docks on water bodies where there wasn't much difference between high and low water. They had jurisdiction on putting docks below the low water point. Jacob clarified that Lake Mary Ronan and Swan Lake weren't listed as navigable on the State's list. He agreed that on Flathead Lake, they did have scenarios where docks extended below low water. That wasn't a problem yet. It was a potential problem down the road. Steve said this was for the Commissioners to decide. The Board got to decide what they wanted to recommend. Frank asked where the regulation was that said the County had authority over buoys within the scope of what they were doing. Jacob explained that State law said the County had the authority to authorize buoys. If the County did it, you didn't have to go to the State to get approval. Frank thought a reasonable condition would be if there was a conflict with the neighbor, they should relocate the buoy as acceptable to the neighbor and the County and report the location. He thought it was burdensome to reapply. Steve agreed.

Steve reported that Clint mentioned staff would produce a set of conditions when this went to the Commissioners. Jacob outlined that Clint included the conditions from the lakeshore protection regulations as part of point 5 on pg. 3. Those were the only conditions that the lakeshore regulations had for buoys. Steve contrasted this to the usual format of conditions the Board received. Jacob said they would be happy to make that adjustment. They hadn't provided conditions on previous buoy applications so that would be a first. Steve clarified that if they were going to produce a list of conditions, this condition of moving it if future neighbors objected to the boat drifting in front of their house could be included as one. If staff weren't going to do conditions, it would have to be in these findings. That was his recommendation.

Jacob reiterated Clint's remark that when they actually issued a staff report and permit for the Commissioners to sign off on, it had a list of usually 15 or 20 conditions. They would include these in #5 as well as standard boilerplate conditions. Steve requested adding the condition where if a neighbor in the future objected to the swing of the moored boat crossing the riparian boundary, the landowner must move the buoy.

Frank drew attention to #9 on pg. 4, which said it would be a white buoy with a blue stripe. Lee asked if the 3450-pound weight of the concrete block was required. Clint said that wasn't required; it was what the applicants proposed. Steve noted the chain seemed short. If the water got rough and the bow bounced up, it could reach the end of the chain quickly and cause problems. Jacob thought the rubber snubber was what [the applicant] hoped would save it there.

Frank asked for clarification of the line that was to perpendicular to the high water mark. Different configurations were discussed as well as the origins in law of using riparian boundaries and the description used there. The lines in this case were also described and discussed. Clint

said the heavier dark line was where they took the 90 degree perpendicular line out from [the shoreline]. Frank concluded the applicant had the light red line. Jacob said they tried to create a best-fit line based on all property in that picture, and go perpendicular from that.

Motion made by Steve Rosso, and seconded by Frank Mutch, to recommend approval with the changes as recommended to the findings and conditions. Motion carried, all in favor.

MINUTES (8:01 pm)

May 9, 2018 minutes:

Steve listed three changes on pg. 4. In the 4th line of the second paragraph, 'know if' replaced 'know that'. In the last paragraph, 'Commissions' changed to 'Commissioners' in the third line, and in the 7th line, 'x, y and x' became 'x, y and z'. On pg. 8, in the 5th line of the 3rd paragraph, '[lath]' changed to 'path'.

Motion by Steve Rosso, and seconded by Frank Mutch, to approve the May 9, 2018 meeting minutes as amended. Motion carried, 3 in favor (Steve Rosso, Brendeon Schoening, Frank Mutch) and 2 abstentions (John Fleming, Lee Perrin).

September 12, 2018 minutes:

Motion by Frank Mutch, and seconded by John Fleming, to approve the Sept. 12, 2018 meeting minutes as written. Motion carried, 4 in favor (Steve Rosso, John Fleming, Lee Perrin, Frank Mutch) and 1 abstention (Brendeon Schoening).

OTHER BUSINESS (8:05 pm)

None.

Steve Rosso, chair, adjourned the meeting at 8:05 pm.